KESATUAN PEKERJA-PEKERJA PERUSAHAAN DUNLOP MALAYSIA

v.

DMIB BHD

COURT OF APPEAL, KUALA LUMPUR
ABDUL HAMID MOHAMAD JCA
KC VOHRAH JCA
ALAUDDIN MOHD SHERIFF JCA
[CIVIL APPEAL NO: W-04-64-97]
19 JUNE 2002

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Appeal against decision of High Court affirming Industrial Court award - Whether there were irregularities in manner award was reached - Whether application to be granted*

LABOUR LAW: *Industrial Court - Decision - Implementation of rota work system - Whether findings of court tainted with irregularities*

EVIDENCE: *Burden of proof - Allegation of particular fact - Witnesses - Offer for cross-examination - Whether sufficient to prove shortcomings of work system - Whether onus discharged*

The appellant, a trade union, and the respondent company had concluded a collective agreement. However, a trade dispute arose as they disagreed on the implementation of a rota work system which had the effect of rotating the employees' weekly rest day and abolishing Sundays as being a fixed rest day. The matter was referred to the Industrial Court which awarded in favour of implementing the said system.

The union applied to the High Court for a *certiorari* to quash the said award, submitting that there were irregularities in the manner which the award was reached. However, the High Court affirmed the findings of the Industrial Court. Hence, this appeal.

Held:
Per KC Vohrah JCA

[1] The Industrial Court had properly admitted documents, *ie*, the letters between the parties, which showed that the terms referred therein had already been made firm and had been agreed to and were actual written agreements between them. Thus, these documents were not caught by sub-ss. (1) and (3) of s. 54 of the Industrial Relations Act 1967 ('the Act'). Notwithstanding the aforementioned, these letters were not relied upon by the court as the basis of the award. (p 713 f-g)

[2] Based on the facts, the Industrial Court had based its decision on the company's reasons for implementing the said system, the union's failure to adduce any evidence in rebuttal, and the law relating to the implementation of such system. (p 713 h)

[3] The union was required to prove to the Industrial Court that the members objected to the rota system and justify its non-implementation. Instead, the union merely offered its witnesses for cross-examination without those witnesses giving examination-in-chief which was, in effect worthless. The practice in court is for a witness for a party be sworn in, be examined-in-chief by the party calling him at length before cross-examination or examined briefly and then offered for cross-examination. The union did not adduce any evidence, by way of rebuttal or controverted, to prove that the said system was perverse. (pp 715 f-g & 716 a)

[4] The company has the prerogative to operate and manage its business for its benefit. Furthermore, there was nothing in the collective agreement which expressly provided, nor any evidence adduced, to indicate that the Sunday rest day was an existing benefit. On the contrary, art. 5(a) of the said agreement allowed the implementation of a rota work system. Additionally, s. 59(1) of the Employment Act 1955 confers the employer the right to determine the rest day in a week. (p 717 b & d)

[5] Judging from the award of the Industrial Court, and from decision of the judicial commissioner, due consideration had in fact been given to s. 30 of the Act in light of the implementation of rota system against its financial impact on the tyre industry, the national economy and the probable effect in related or similar industries. Thus, the union's contention that no consideration was given to sub-ss. (4), (5) and (6) of s. 30 of the Act was baseless. (pp 717 f, h & 718 g)

[Appeal dismissed with costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, sebuah kesatuan pekerja, dan syarikat responden telah membuat satu perjanjian bersama. Bagaimanapun, satu perbalahan pekerjaan telah timbul apabila mereka tidak bersetuju dengan pelaksanaan satu sistem kerja bergilir-gilir yang kesannya menyebabkan hari cuti mingguan pekerja digilirkan dan hari Ahad sebagai hari cuti tetap dihapuskan. Perkara ini telah dibawa kepada Mahkamah Perusahaan yang telah memberi keputusan yang memihak kepada pelaksanaan sistem tersebut.

Pihak kesatuan memohon kepada Mahkamah Tinggi suatu perintah *certiorari* untuk membatalkan keputusan tersebut, dengan alasan terdapat beberapa ketidaktentuan di dalam cara keputusan tersebut dicapai. Bagaimanapun, Mahkamah Tinggi telah mengesahkan kesimpulan yang dibuat oleh Mahkamah Perusahaan. Oleh itu, inilah rayuannya.

Diputuskan:
Oleh KC Vohrah HMR

[1] Mahkamah Perusahaan telah secara sempurna menerima dokumen-dokumen seperti surat-surat antara kedua-dua pihak yang menunjukkan bahawa terma-terma yang dirujuk di sini telah ditetapkan dan dipersetujui bersama dan adalah secara dasarnya perjanjian bertulis antara mereka. Oleh itu, dokumen-dokumen tersebut tidak terikat oleh sub-ss. (1) dan (3) kepada s. 54 Akta tersebut. Tanpa mengambil kira perkara di atas, surat-surat tersebut tidak menjadi sandaran oleh mahkamah sebagai asas kepada keputusannya.

[2] Berdasarkan kepada fakta-fakta, Mahkamah Perusahaan telah menyandarkan keputusannya kepada sebab-sebab syarikat bagi melaksanakan sistem tersebut, kegagalan pihak kesatuan untuk menimbulkan bukti-bukti bagi menyanggahnya, dan undang-undang berkaitan pelaksanaan sistem tersebut.

[3] Beban adalah pada pihak kesatuan bagi membuktikan kepada Mahkamah Perusahaan bahawa ahli-ahlinya membantah sistem bergilir-gilir tersebut dan membela ketidakperlaksanaannya. Sebaliknya, kesatuan hanya menawarkan saksi-saksinya untuk soalan balas tanpa saksi-saksi tersebut memberi keterangan pada pemeriksaan utama yang pada dasarnya tidak bernilai. Amalan di mahkamah ialah untuk seorang saksi bagi sesuatu pihak mengangkat sumpah, diperiksa secara utama oleh pihak yang memanggilnya secara terperinci sebelum soalan balas atau diperiksa secara ringkas sebelum ditawarkan untuk soalan balas. Pihak kesatuan tidak menimbulkan sebarang bukti-bukti, baik secara penyangkalan atau secara perbahasan, bagi membuktikan bahawa sistem tersebut menyalahi peraturan.

[4] Syarikat tersebut mempunyai hak muktamad bagi beroperasi dan menjalankan perniagaannya bagi mendapat keuntungan. Seterusnya, tiada apa-apa di dalam perjanjian bersama yang dinyatakan secara terang, mahupun sebarang bukti ditimbulkan, untuk menunjukkan bahawa hari cuti Ahad adalah faedah sedia ada. Sebaliknya, art. 5(a) perjanjian tersebut membenarkan pelaksanaan sistem kerja bergilir-gilir. Secara tambahan s. 59(1) Akta Pekerjaan 1955 menganugerahkan majikan hak untuk menentukan hari rehat dalam seminggu.

[5] Melihat kepada keputusan Mahkamah Perusahaan dan keputusan pesuruhjaya kehakiman, pertimbangan sewajarnya telah diberi kepada s. 30 Akta tersebut berdasarkan kepada pelaksanaan sistem kerja bergilir-gilir terhadap impak kewangan kepada industri tayar, ekonomi kebangsaan dan kesan kemungkinan kepada industri yang berkaitan. Oleh itu, hujah kesatuan bahawa tiada pertimbangan telah diberi kepada sub-ss. (4), (5) dan (6) kepada s. 30 Akta tersebut tidak berasas.

[Rayuan ditolak dengan kos.]

Case(s) referred to:

Ashbridge Investment v. Minister of Housing and Local Government [1965] 3 All ER 371 ***(refd)***

DMIB Bhd v. Kesatuan Pekerja-pekerja Perusahaan Dunlop Malaysia [1996] 1 ILR 249 ***(refd)***

Fujishah (M) Sdn Bhd v. Kesatuan Pekerja-pekerja Perusahaan Logam [1993] 2 ILR 270 ***(refd)***

Harpers Trading Sdn Bhd v. National Union of Commercial Workers [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 ***(refd)***

Nestle Food (M) Sdn Bhd v. Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan [1995] 1 ILR 249 ***(refd)***

Legislation referred to:

Employment Act 1955, s. 59(1)
Industrial Relations Act 1967, ss. 26(1), 30(4), (5), (6), 54(1), (3)
Rules of the High Court 1980, O. 53

Other source(s) referred to:

Sarkar, *Law of Evidence*, 14th edn, vol 1, pp 1991, 1998, 2166

For the appellant - B Lobo (LG Seah); M/s Lobo & Assoc
For the respondent - N Sivabalah; M/s Shearn Delamore & Co

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R1-25-30-96]

Reported by M Maheswaran

JUDGMENT

KC Vohrah JCA:

Under s. 26(1) of the Industrial Relations Act 1967 ('the Act') where a trade dispute exists or is apprehended, the minister may, if that dispute is not otherwise resolved, refer the dispute to the court on the joint request in writing to the minister by the trade union of workmen which is a party to the dispute and the employer who is a party to the dispute or a trade union of employers which is a party to the dispute.

The Industrial Court became seised of a dispute which was referred to the court on a joint request by DMIB Berhad ('the company') and the Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the union').

The company and the union had negotiated for a new collective agreement. The company proposed to introduce the "rota work system" in its factory in Petaling Jaya.

Under the then system, the company had operated six days a week. To enable the company to operate continuously seven days a week and purportedly thereby increase production, the rota work system was proposed to be introduced.

Under the rota work system, the weekly day of rest of the employees in the factory rotate instead of a fixed day of rest in a week.

Both the union and the company by their joint letter dated 5 September 1994 wrote to the minister:

> Yang Berhormat,
>
> RE: JOINT REFERENCE UNDER SECTION 26(1) OF THE INDUSTRIAL RELATIONS ACT, 1967
>
> We humbly refer to the above matter and wish to inform Yang Berhormat that a trade dispute exists between DMIB Berhad (the Company) and DMIB Berhad Employees Union (DBEU) (the Union) between DMIB Berhad (the Company) and DMIB Berhad Employees Union (DBEU) (the Union) over the Company's intention to implement the 'Rota Work System' in the Company. The Rota Work System is a system wherein the employees weekly rest day shall be in accordance with the Company's roster normally set out before the commencement of each month.
>
> The Company and the Union hereby make this humble joint request in writing under Section 26(1) of the Industrial Relations Act 1967 seeking the consent of Yang Berhormat to refer the aforesaid trade dispute to the Industrial Court.

After the reference was registered in the Industrial Court, the parties filed their respective pleadings and thereafter the trade dispute was heard by the Industrial Court.

The managing director of the company gave evidence on behalf of the company. The union, however, did not call any witnesses in support of their case save to offer its officers for cross-examination.

The Industrial Court on 26 February 1996 handed down its decision in Award No. 65 of 1996 dated 26 February 1996. The court made an award that the company be allowed to implement the Rota Work System.

There was an application under O. 53 of the Rules of the High Court filed before the High Court for *certiorari* to quash the award, the Union alleging that the Industrial Court had acted in excess of its jurisdiction or without jurisdiction. The learned judicial commissioner of the High Court dismissed the application stating that the Industrial Court had not committed any error of law and had correctly approached the facts of the case. The union has appealed to the Court of Appeal against the decision of the High Court.

Before us the decision of the High Court is attacked on lengthy grounds and we will come to these later.

At the Industrial Court hearing the company and the union were "at odds with regard to what is the status of their present weekly day of rest". The union contended that Sunday had been a fixed weekly day of rest for all employees since the inception of the business operations of the company and this had crystallised into a term and condition of employment. The company disagreed and contended that it was never an express or implied term that Sunday was the permanent fixed weekly day of rest incapable of being changed. This was one of the strong issues of the dispute.

It must be pointed out that the Industrial Court was aware that the parties had in fact concluded a new collective agreement on 5 September 1994 agreeing on all terms and conditions of employment except for the rota work system proposed by the company. It was this issue relating to the rota work system which, as was previously pointed out, was jointly requested by the parties to be referred to the minister who agreed and so referred the matter to the Industrial Court.

At the time the pleadings were filed the new collective agreement had been deposited with the Industrial Court and was pending cognisance. However, when the hearing commenced the court was informed that the registrar, following the learned president's instruction, had rejected the new collective agreement and had not given it cognisance.

The Industrial Court declined to inquire as to why it was rejected and directed the parties to confine their attention to the dispute referred to the court ie, the rota work system proposed by the company.

We now come to the first ground of appeal which was pursued before the High Court and before us, ie, that the Industrial Court had acted in breach of s. 54 of the Act and therefore had exceeded its jurisdiction when making the award. The learned judicial commissioner had ruled in his judgment that there was no breach of the said s. 54.

It will be remembered that the new collective agreement deposited in the Industrial Court had been rejected by the president and not given cognisance and the Industrial Court hearing the dispute had declined to inquire why that was so. The Industrial Court had ruled it would confine itself only on the dispute referred to the court, ie, the rota work system proposed by the company.

The Industrial Court then admitted certain annexures to the new collective agreement. We would like to refer to what the Industrial Court had stated on this issue. The union had objected to the admission of the annexures pointing out to the Industrial Court that the annexures, some of which are letters between the company and the union's officials, were not signed by all the signatories of the agreement. It was also pointed out that one of the letters, for example, dated 5 September 1994 (which is also the date of the new collective agreement) was written by the company's industrial relations manager to the general secretary of the union. This letter also referred to another letter of understanding dated 24 June 1991 (on the rota work system).

The Industrial Court had in its award noted that this letter of understanding dated 5 September 1994 states that the company wished to affirm its commitment to the letter of understanding dated 24 June 1991 to the extent that upon implementation of the rota work system the company shall restore the quantum of 2.75 months' bonus into overtime computation of employees so involved in the system. The union submitted that these documents did not form part of the new collective agreement. Further it was submitted that they should be excluded under s. 54 of the Industrial Relations Act 1967.

The Industrial Court ruled that these annexures which were letters between the parties were relevant to the dispute and the Industrial Court also made a finding that these letters were not written during the negotiation to which the trade dispute before the Industrial Court related. The Industrial Court found that the letter of understanding was written on 24 June 1991 and noted that the trade dispute had not arisen at that time. The Industrial Court overruled the objection and admitted the annexures as part of the collective agreement.

Before the learned judicial commissioner and before us the learned counsel for the union argued that the Industrial Court was wrong in admitting the letters contrary to the mandatory requirements of sub-ss. (1) and (3) of s. 54 of the Act as they relate to negotiation or conciliation proceedings or offer relating to a matter connected with the trade dispute. The relevant provisions read:

> 54 (1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings other than a written statement in relation thereto agreed to and signed by the parties to the dispute.
>
> (2) ...
>
> (3) No evidence shall be given in proceedings before the Court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by an person or trade union except with the consent of that person or trade union.

Having perused sub-ss. (1) and (3) of s. 54 we do not agree with the view of the learned judicial commissioner that the learned chairman of the Industrial Court was correct when he observed that the letters were not written during the negotiation to which this trade dispute relates. Certainly some of the letters including the letter of understanding dated 5 September 1994, do make a reference to the statement that both parties shall jointly refer the matter of "rota work system" to the Industrial Court. But having said that, we, however, agree with the learned judicial commissioner when he held that the Industrial Court had properly admitted the documents. These documents show that the terms referred therein had already been made firm and had been agreed to and were actual written agreements between the parties (see Appeal Record Vol 2, and 396 to 418) and thus, they are not caught by sub-ss. (1) and (3) of s. 54 of the Act, which merely exclude evidence of any negotiations, conciliations or offers made without the other party's agreement. We also agree with the learned judicial commissioner that it is pertinent to note that the two letters complained of were not even relied on by the Industrial Court as the basis of the award.

It is clear, in fact, that the Industrial Court had based its decision on the company's reasons for implementing the rota work system, the union's failure to adduce any evidence in rebuttal, and the law relating to the implementation of such a system. The Industrial Court in its award examined the evidence of Encik Md Ja'afar bin Abdul Carim, the managing director of the company. The award deals with his evidence running to four pages with its analysis, observation of law and findings. To state it in a short compass, the witness

gave evidence on the proposal to rotate the weekly day of rest instead of having a fixed day and the reasons therefor and examined the system's impact on the tyre industry and similar industry, the state of the economy *vis-a-vis* competition from imported tyres and the effect on the workers. His evidence was to the effect that it was necessary for the tyre business to survive severe competition from imported tyres after a reduction of tariff and expected further reduction of tariff after WTO negotiation and for operational reasons. The Union objected to the system on the ground that the system would be to the social and monetary detriment of the employees.

And with that we come to the next connected grounds of appeal of the Union which can be summarised as that the Judicial Commissioner erred in law when he held the evidence of the witness of the company was not rebutted and remained unchallenged since the company's witness was cross-examined at length and the Union had offered its witnesses for cross-examination and that the initial burden of proof had been discharged by this offer of witnesses.

In our view there is no merit in any of the grounds.

The learned judicial commissioner had stated that based on the evidence before him, the learned chairman of the Industrial Court could not have come to any other conclusion as he did on the award. He held that had the Industrial Court come to an opposite finding, its decision would have been against the weight of the evidence and, therefore, unreasonable. He was of the view that it was the company which gave evidence through its sole witness to justify the company's need to implement the rota work system and observed, quite correctly, that since the union chose not to call any witnesses to rebut the company's witness's testimony, accordingly the company's witness's testimony remained unchallenged. We have ourselves examined the notes of proceedings in the appeal record and note that out of 21 pages of cross-examination (appeal record, vol 2, 548-569) while there were challenges made to the testimony of this witness relating to some aspects of his evidence concerning the Union's view that the system would be to the social and monetary detriment of the employees and that Sunday had become a day of rest, answers of the witness certainly did not indicate agreement with the union's view.

The learned judicial commissioner observed relevantly that the union failed to call any witness to show in what way the rota work system would be detrimental, socially or financially, to their members and that the failure to rebut the company's evidence was "therefore fatal to the union's case". It is to be observed that in the notes of proceedings (appeal record, vol 2. 578) this is recorded:

Mr. Lobo does not propose to call any witness as he believes that the Company has not discharged its burden and offers his witnesses to the Company.

Mr Nathan says the President and Secretary (of the Union) have been listening in Court therefore it serves no purpose?"

The learned judicial commissioner in his judgment held that a mere offer of witnesses for cross-examination (as indeed the note indicates) without the witnesses giving evidence is worthless.

Counsel for the union has attacked this ruling. For ourselves we are puzzled by the fact counsel for the union did not propose to call any witness and quite contradictorily offered his witnesses for cross-examination. Counsel has cited *Sarkar's Law of Evidence*, 14th edn, vol 1 at 1991, 1998 and 2166 and argued that the Industrial Court had failed to note that the initial burden of proof in the pleadings was on the company and that therefore the union's offer of its witnesses for cross-examination was sufficient to discharge its evidential burden. With respect to counsel we cannot find that stated anywhere in Sarkar but what *Sarkar* does state is that if the adverse party has had liberty to cross-examine and has not chosen to exercise it, the case is the same as if he had cross-examined; "that wherever the opponent has declined to avail himself of the offered opportunity it must be supposed to have been taken that the testimony could not and need not be disputed at all be shaken by cross-examination". Obviously the offered opportunity is that of cross-examining a person who has been sworn in as a witness of the party calling him. In the Industrial Court the union chose not to call any witness to give evidence in examination-in-chief and we fail to see how cross-examination could at all arise. The practice in court is for a witness for a party be sworn in, be examined-in-chief by the party calling him either at length before cross-examination or examined briefly and then offered for cross-examination. This was not done and the learned judicial commissioner was perfectly correct when he held that a mere offer of witnesses for cross-examination without the witnesses giving (evidence-in-chief) is worthless. In this context we do agree with the learned judicial commissioner that it was indeed for the Union to show to the Industrial Court why their members objected to the rota work system and why the system should not be implemented. The learned judicial commissioner held that the union had failed to do so and he observed that the Industrial Court, after careful scrutiny of the facts, made certain findings of fact, and since the union did not give any evidence to rebut the company's case, the Industrial Court was therefore justified in coming to its conclusion on the facts. We entirely agree that this is not a case where the Industrial Court had acted on no evidence or had come to a conclusion which on the evidence it could not reasonably come to (see *Ashbridge Investment v. Minister of Housing and Local Government* [1965] 3 All ER 371); nothing was adduced

to show that the rota work system was a perverse system by rebuttal or controverted evidence. These are matters of fact for the Industrial Court to determine and the High Court never sits on appeal in review cases to disturb the findings of facts. This has been re-iterated time and again. In *Harpers Trading Sdn Bhd v. National Union of Commercial Workers* [1991] 2 CLJ 881; ([1991] 1 CLJ (Rep) 159) this what Jermuri Serjan SCJ said at p. 885 (p. 164):

> At the hearing of this appeal we drew at the earliest opportunity the attention of counsel for the appellant while submitting his arguments on the first three grounds that the High Court was not concerned with an appeal but with judicial review by way of *certiorari* as we felt that counsel was really engaged in arguing the appeal on the merits of the trade dispute. We invited counsel to address us on why *certiorari* should be granted to the appellant instead of making his submission on the question of erroneous finding of the Industrial Court on the facts as it found them. It seems to us that it should be treated as trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable. There is no dearth of authorities on this proposition – *Tan Hin Jin & Anor v. Prabhulal G Doshi* [1971] 1 MLJ 274 per Azmi LP at p. 275 quoting Morris LJ in *R v. Northumberland Compensation Appeal Tribunal,* at *ex p Shaw* [1952] 1 KB 338 at p. 357; *Minister of Labour and Manpower & Anor v. Paterson Candy (M) Sdn Bhd* [1980] 2 MLJ 122 per Chang Min Tat FJ at p. 125; *Hotel Equatorial (M) Sdn Bhd v. National Union of Hotel, Bar and Restaurant Workers* [1984] 2 CLJ 6; [1984] 1 CLJ (Rep) 155 per Seah FJ and *Goon Kwee Phoy v. J & P Coats (M) Bhd* [1981] 2 MLJ 129, per Raja Azlan Shah CJ (Malaya) (as he then was) at p. 136 paras A-C in the right hand column.

The learned judicial commissioner had dealt with the complaint that the Industrial Court acted beyond the scope of the statutory reference in that by allowing the rota work system, the Industrial Court had encroached into the existing collective agreement contrary to art. 33 (relating to rest day), art. 34 (relating to working hours) and art. 48 (relating to existing benefits). The learned judicial commissioner examined arts. 33, 34 and 48 and held that the Industrial Court was fully entitled to allow the rota work system to be implemented by the company. The union before us says the learned judicial commissioner was wrong in his ruling. He had held that art. 33 is silent on Sunday being the permanent rest day and that the implementation of the rota work system is not contrary to the existing collective agreement. He further held that it falls squarely within art. 5(a) of the collective agreement which reads:

> The Union recognises the right of the Company to operate and manage its business in all respects including the right to engage, discipline, suspend or discharge for proper cause, to determine the manning of its operations and the allocation of duties to its employees.

We agree with the views of the learned judicial commissioner. It is the prerogative of the company to operate and manage its business in the manner it thinks benefits it and there have been precedents for the rota work system as was pointed out by the learned judicial commissioner, and we note, the Industrial Court had in two earlier decisions, *Nestle Food (M) Sdn Bhd v. Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan* [1995] 1 ILR 249 and *Fujishah (M) Sdn Bhd Prai v. Kesatuan Pekerja-pekerja Perusahaan Logam* [1993] 2 ILR 270 endorsed the system. We also note that since, as was observed by the learned judicial commissioner, it is not expressly provided in the collective agreement that Sunday is the permanent rest day, or there was any evidence adduced in court that the Sunday rest day was an existing benefit, art. 5(a) does allow for the implementation of the rota work system. Not to be missed is that s. 59(1) of the Employment Act 1955 confers the right on the employer to determine the rest day in a week. Section 59(1) states:

> Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer ... .

The next ground which has been taken is that the judicial commissioner had erred in law and in fact when he held that in making the award the Industrial Court had taken the policy and purpose of the Act into account when the Industrial Court did not take into account sub-ss. (4), (5) and (6) of s. 30. When this complaint was brought up in the court below the court rejected it. We have examined the award of the Industrial Court and the analysis over four pages of the unrebutted evidence of the witness of the company as to the financial implication and effect on the industry, the effect on the economy of the country which anticipated further reduction of the tariff on imported tyres or even removal of tariffs to accord with obligations under the World Trade Organisation, the need to be competitive, the need to increase the work force for the company's operations, that the employees will not be financially disadvantaged as they will have more rest days and more overtime. The unrebutted evidence also shows that the other companies, one of which a tyre company, Sime International Tyre, had also adopted the system and the tyre company increased its production. We note that the Industrial Court specifically referred to the requirement of s. 30 of the Act to have regard to the public interest, the financial implication and the effect on the economy of the country and on the industry concerned and also the probable effect in related or similar industries and to act according to equity and good conscience and the

substantial merits of the case without regard to technical or legal form and held the requirements as having been met. We also are of the view that the requirements have been met. The finding is a straight forward finding and we are in full agreement with the High Court that there is no ground whatsoever to interfere with such a finding. We have to remind litigants that the High Court in its review jurisdiction is not an appeal court.

Did the Industrial Court answer the question remitted to it? The High Court said it did so. The Union said it did not but had instead answered some other questions.

At the beginning of this judgment we reproduced the sole question that was requested by both parties jointly to be referred by the minister to the Industrial Court for its decision – whether the company should be allowed to implement the rota work system. And the Industrial Court did just that. The said court stated:

> The Court is satisfied that that the proposal of the Company to introduce the Rota Work System is a *bona fide* exercise of its management function. In doing so it does not contravene any regulatory or other law. The fact that it may vary a past practice of treating Sunday as a rest day does not bring it within the ambit of Sections 33 or 56 of the Industrial Relations Act, 1967. Therefore it does not require special circumstances.

Then in reference to sub-ss. (4) and (5) of s. 30 (we have already discussed that before) the Industrial Court cautioned:

> Therefore the Court having considered the requirements of s. 30(4) of the Act in particular the public interest the financial implications and the good effect the award would probably have on the economy of the country and the industry concerned and the Court recognising the substantial merits of the Company's proposal as required by s. 30(5) of the Act awards that the Company be allowed to implement the Rota Work System.

The learned judicial commissioner quite clearly was right in rejecting as baseless that the Industrial Court had failed to answer the question posed to it.

We have carefully read the award of the Industrial Court and gone through the judgment of the learned judicial commissioner and we find absolutely no merit in any of the grounds pursued by the union in attacking his decision. We dismiss the appeal with costs. Deposit to the account of taxed costs.